IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE Mr. JUSTICE C.V.RAMULU

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W.P.Nos.24588 of 1995 and 2089 of 1996

WRIT PETITION No. 24588 of 1995

Between:

1 Superintending Engineer,
Tribal Welfare, Sector-B,
M.V.P. Colony, Visakhapatnam.
2 The Executive Engineer,
Tribal Welfare, Seethampeta, Srikakulam District.
3 Deputy Executive Engineer,
Tribal Welfare, Seethampeta,
Srikakulam District.

..... PETITIONERS

AND

1 The Chairman/Presiding Officer,
Industrial Tribunal-Cum-Labour Court, Visakhapatnam.
2 Sri A.Aruna Kumar, Technical Works Inspector,
Tribal Welfare, Seethampeta,
Srikakulam District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue Writ or Order or Direction more particularly in the nature of Writ of Mandamus calling for the records relating to the award passed in the Industrial Dispute No. 136/92, dated 24-4-1995 by the first respondent and declare the same as illegal, arbitrary and without jurisdiction and consequently set aside the same.

Counsel for the Petitioner: GP FOR SOCIAL WELFARE

Counsel for the Respondent No.1: GP FOR LABOUR

Counsel for the Respondent No.2: SRI G. RAMA GOPAL

WRIT PETITION No. 2089 of 1996

Between:

Adurthi Arunakumar,
Seethampeta, Srikakulam District

..... PETITIONER

AND

1 The Industrial Tribunal cum Labour Court,
Visakhapatnam
2 The Superintending Engineer, Tribal Welfare,
Sector B, MVP Colony, Visakhapatnam
3 The Executive Engineer, Tribal Welfare,
Seethampeta, Srikakulam District.
4 Deputy Executive Engineer, Tribal Welfare
Seethampeta, Srikakulam District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to call for the records pertaining to Award dt.24.4.95 in I.D.No.136/92 as published in G.O.Rt.No.1122, Labour, Employment and Training (Lab.I) Department dt.12.5.95 on the file of the first respondent and quash and set aside the award dt.24.4.95 in I.D.No.136/92 so far as dismissed the claim for back wages by issuing a writ, order or direction more particularly one in the nature of writ of certiorari; consequently direct the 2 to 4 respondents to pay full back wages and to pass such other order or orders as the Hon'ble Court may deem fit and proper in the interest of justice.

Counsel for the Petitioner: Mr. G.RAMA GOPAL

Counsel for the Respondents: GP FOR SOCIAL WELFARE

The Court made the following :

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ORAL ORDER:

W.P.No.24588 of 1995

This Writ Petition is filed by the Superintending Engineer, Tribal Welfare, Sector-B, MVP Colony, Visakhapatnam and two others aggrieved by the Award passed by the Industrial Tribunal-cum-Labour Court at Visakhapatnam in I.D.No.136 of 1992, dated 24-4-1995 wherein the I.D. was answered in favour of the 2nd respondent-workman directing the writ petitioners-management to reinstate the workman into service within a week of receipt of the Award and to pay the wages from the date of receipt of the Award; failing which, the workman would be entitled to payment of interest at 12% per annum. The workman was also granted continuity of service, but back wages were denied.

The 2nd respondent being aggrieved by the oral termination raised a dispute in I.D.No.136 of 1992 before the Industrial Tribunal-cum-Labour Court at Visakhapatnam under Section 2-A(2) of the Industrial Disputes Act,1947 (for short 'the Act'). It is the case of the respondent-workman that he was appointed as NMR Technical Work Inspector as per Proceedings of the 1st respondent dated 19-7-1986 on daily wage of Rs.17/-. He worked to the satisfaction of the management for one year. His services were terminated without just and reasonable cause in the month

of July,1987 stating that his services were no longer required. He approached this Court (High Court) earlier and the petitioner herein was directed to consider his case for absorption. He was continued in service till 11-3-1992. Thereafter, without any reasonable cause, his services were terminated without following the procedure as contemplated under Section 25-F of the Act. A detailed counter affidavit has been filed by the petitioners-management before the Tribunal denying the allegations made in the claim petition.

Before the Tribunal, on his behalf, the workman examined himself as W.W.1 and got marked Exs.W1 to W3 and for the Management M.W.1 was examined and Exs.M1 and M2 were marked. After appreciation of the entire evidence available on record, the Tribunal came to the conclusion that the petitioners terminated the services of the respondent-workman without following the procedure as required under Section 25-F of the Act, since he had worked for more than 240 days in a calendar year preceding the date of his termination.

I have gone through the entire material on record including the evidence adduced by both the parties before the Tribunal and the impugned Award.

The finding of the Tribunal that the workman worked for more than 240 days is on the basis of admission made by the management in M.W.1 to the effect that the workman worked for more than 240 days. Thus, from the evidence of M.W.1 coupled with Ex.M1 it can be seen that the workman worked with the petitioners from 28-7-1986 to 8-6-1992 continuously. The finding of fact recorded by the Tribunal is not on the basis of mere presumptions and assumptions and it is on the basis of the oral and documentary evidence available on record. Therefore, the finding of the Tribunal that the services of the workman were terminated without following the due procedure as contemplated under Section 25-F of the Act cannot be found fault with.

Learned counsel for the petitioner, however, gave some details as to the number of days the workman worked with the petitioners. But nothing prevented the petitioners from placing any reliable evidence showing that the workman did not work for 240 days preceding one year before his termination. Such an effort was never made before the Tribunal. On the other hand, their own letter-Ex.M1 and the evidence of M.W.1 categorically shows that the workman worked for more than 240 days. Further, if really the workman did not work, the question of issuance of cheque under Ex.M2 for Rs.5,292/- does not arise, when compared to the number of days he

worked as shown in the affidavit filed in support of the Writ Petition.

For all the above reasons, the Writ Petition is devoid of merits and liable to be dismissed. Accordingly, the Writ Petition is dismissed. No order as to costs.

W.P.No.2089 of 1996

Aggrieved by the very same Award, the workman filed this Writ Petition stating that once the Tribunal came to the conclusion that the provisions of Section 25-F of the Act are violated, he is entitled for payment of back wages and other benefits automatically.

Learned counsel for the petitioner placed before this Court, a letter dated 8-6-1992 addressed by the Executive Engineer, Tribal Welfare, Seethampeta to the Assistant Commissioner of Labour, Srikakulam, wherein it was shown the number of working days attended to by the workman every year from 1986-87 to May,1992. This document, of course, shows that the petitioner had put in upto 1991 more than 240 days every year, but it was not marked before the Tribunal and that is why it cannot be looked into. Since there is a finding that the termination of services of the petitioner is contrary to the provisions of Section 25-F of the Act, it is not automatic for grant of other reliefs, such as, back wages etc. The Tribunal in its wisdom taking the overall circumstances into consideration, denied the back wages; however, the continuity of service was given. The Tribunal while exercising its discretionary powers under Section 11-A of the Act granted such a relief. I am of the opinion that the petitioner has not made out any ground to grant any further relief.

The Writ Petition is devoid of merits and is liable to be dismissed. Accordingly, the Writ Petition is dismissed.

10-2-2005

prk

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 Superintending Engineer,
Tribal Welfare, Sector-B,
M.V.P. Colony, Visakhapatnam.
2 The Executive Engineer,
Tribal Welfare, Seethampeta, Srikakulam District.
3 Deputy Executive Engineer,
Tribal Welfare, Seethampeta,
Srikakulam District.

4 The Chairman/Presiding Officer,
Industrial Tribunal-Cum-Labour Court, Visakhapatnam.
5 Two CCs to G.P. for Labour, High Court Buildings, Hyderabad (OUT)

6 Two CCs toG.P. for Social Welfare, High Court Buildings, Hyderabad (OUT)

7 2 CD copies.